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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,551	02/19/2004	Harry S. Sowden	MCP0295 DIV	5149

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EXAMINER


VALENZA, JOSEPH E

ART UNIT	PAPER NUMBER
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3651

DATE MAILED: 12/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/782,551	Applicant(s) SOWDEN ET AL.	
	Examiner Joseph Valenza	Art Unit 3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/7/04, 8/27/04, 7/1</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

1. Claims 1-2, 5-7, 12-17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen et al or Halbo.

The article (dosage forms) being conveyed is immaterial to the operation of the structure and is functionally equivalent to that in the prior art. Note transfer units 18 and retainers 20 and cam track 143 of Jensen et al or transfer units 1 and retainers 2 and cam track 11 of Halbo.

2. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen et al or Halbo in view of Cook et al.

It would have been obvious that the retainer 20 of Jensen et al or retainers 2 of Halbo could have been a resilient finger gripper like resilient finger gripper 75 of Cook et al.

3. Claims 8, 9, 21, 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over in view of Jensen et al or Halbo in view of Ruth et al or Eldred.

It would have been obvious that the grippers of Jensen et al or Halbo of paragraph 1 could rotate as taught by grippers of Ruth et al or Eldred. With regard to claims 9 and 24, note plunger shaft equivalents 59,60 of Jensen et al or 16 of Halbo.

4. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cvacho et al.

The article being conveyed is immaterial to the operation of the structure and is functionally equivalent to that in the prior art.

5. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen et al or Halbo in view of Cvacho et al.

It would have been obvious that the grippers 20 of Jensen et al or 2 of Halbo of paragraph 1 could move along a dog-bone path like grippers 170 of Cvacho et al.

6. Claims 9, 19 and 20 are rejected under 35 U.S.C. 112 for the following reasons.

Claim 19 is inaccurate. Slack in the conveyor occurs when the length of the conveyor is greater than the length of the conveyor path. Driving both pulleys will not reduce slack from all parts of the conveyor as claimed. Only increasing the length of the conveyor path will eliminate slack.

Claim 19 is indefinite as to what "side slack condition" is. While the order of the words in line 28 of page 53 of the specification is different, the detailed disclosure is wrong also. By positively driving the idler pulley 311 with the drive pulley 309 via a toothed belt 352 one prevents the amount of slack on one run of the belt 312 between pulleys 309 and 311 from moving to the other run of the belt 312 between pulleys 309 and 311.

Claims 9 and 20 are improper dependent claims. The claims can not depend from themselves.

7. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen et al or Halbo in view of Ruth et al or Eldred and Cvacho et al.

It would have been obvious to modify the structure of paragraph 3 by adding the dog-bone path teachings in Cvacho et al.

8. Claims 1-26 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No.

6,742,646. Although the conflicting claims are not identical, they are not patentably distinct from each other because they only differ in obvious variations of breadth and scope.

9. In line 2 of claim 5, "can" should be –cam–.

10. The void in page 21 should be filled.

11. This is a continuing application of applicant's earlier Application No. 09/967,414.

All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 3651

12. Any inquiry concerning this communication should be directed to Joseph E.

Valenza at telephone number (703) 308-2577. Amendments may be faxed to 703-305-

7687. My normal workweek is Monday through Thursday.

A handwritten signature in black ink that reads "Joseph Valenza". The signature is written in a cursive, flowing style with a large initial "J".

JOSEPH E. VALENZA
PRIMARY EXAMINER